quired suit to be brought against the drawers and indorsers of a bill of exchange jointly. Under this statute the suit was brought against the drawers and also the indorser of the bill.

This statute, as adopted by the district judge, was brought before this court in the case of Keary and others *v.* The Farmers and Merchants' Bank of Memphis, 16 Peters, 89, in which the court held that "the law of Mississippi is repugnant to the provisions of the act of Congress, giving jurisdiction to the courts of the United States."

We see no objection, in principle or in practice, to the discontinuance of the suit against the drawers of the bill. Their liability was distinct from that of the indorser. In no respect could the indorser be prejudiced by the discontinuance. As a matter of course it was permitted at the cost of the plaintiffs.

In the case of Minor et al. *v.* The Mechanics' Bank of Alexandria, 1 Peters, 46, the court held, that when the defendants sever in their pleadings, a *nolle prosequi* ought to be allowed against one defendant," that "it is a practice which violates no rules of pleading, and will generally subserve the public convenience. In the administration of justice, matters of form not absolutely subjected to authority may well yield to the substantial purposes of practice."

The judgment of the Circuit Court is affirmed, with costs.

Order.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Mississippi, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District Court in this cause be and the same is hereby affirmed, with costs and damages, at the rate of six per centum per annum.

ELIZABETH WALKER, DEVISEE OF ROBERT WALKER, DECEASED, PLAINTIFF IN ERROR, *v.* FRANCIS T. TAYLOR, WILLAIM ROBINSON, WILLIAM E. SABLETT, THOMAS COOK, AND JOHN M. CRESUP, TRUSTEES OF THE TOWN OF COLUMBUS, DEFENDANTS.

Where the plaintiff below claimed a ferry right under an act of the legislature of Kentucky, and the ground of defence was that the act was unconstitutional and void as impairing vested rights, and the decision of the highest State court was against the plaintiff, a writ of error, issued under the 25th section of the judiciary act, will not lie.

This court can entertain jurisdiction under that section only when the decision of the State court is in favor of the validity of such a statute. Here, the decision was against its validity.

This case was brought up, by a writ of error issued under the

25th section of the judiciary act, from the Court of Appeals for the State of Kentucky.

The case was this.

In 1820, the legislature of Kentucky passed an act, entitled "An act for establishing and laying off a town at the Banks." 2 Morehead & Brown's Digest, 1044. It recited that the general assembly of Virginia, in 1783, had authorized the deputation of officers of the Virginia line to lay off four thousand acres of land in such manner and form as they might judge most beneficial for a town, on the Mississippi or the waters thereof, and vest the same in trustees for the common benefit and interest of the whole; that trustees were appointed, who located the four thousand acres of land upon the Mississippi, including the Iron Banks, and that said trustees, or a majority of them, had died before executing the trust reposed in them.

The statute then appointed trustees, who were to cause a survey to be executed for the four thousand acres of land and have the same duly recorded in the office of the surveyor of the lands set apart for the military bounty on State establishment, but declared that the trustees should not (unless thereafter authorised by law) sell or dispose of the same or any part thereof in any manner whatever, but hold the same subject to the control and future disposition by the legislature. It then proceeded to authorize them to lay off a town, divide it into lots, cause a survey to be made, adopt rules for the government of the town, and then authorized them to sell at public sale any number of lots, not exceeding one hundred lots, of half an acre each. All the money arising from such sale was to be paid into the public treasury of the State.

In 1821, an act was passed to amend and repeal, in part, the above act (2 Morehead & Brown, 1046). This authorized the trustees to appoint a treasurer, who should pay all the money received into the treasury of the State, to be then divided amongst the officers and soldiers of the Virginia lines; to sell fifty more lots; to sue trespassers, &c., &c.

Under these acts, the trustees laid off the town of Columbus into lots, streets, alleys, and public grounds, and made and recorded a plan therefor, by which they left an open space of ten poles, as a common, along the margin of the river, between low water-mark and the lots next to the river, and dedicated this common to public use.

In 1825, an act was passed (acts of 1825, chap. 72), the first section of which authorized the trustees to sell the whole of the in and out lots, provided they should all concur; and the second section authorized the trustees, or a majority of them, to "fix the rates of ferriage across the Mississippi river, and lease out ferries for any term of years, not exceeding five, and apply the rents to the improvement of the town."

In 1829 (acts of that year, page 31), it was provided, by an act passed in that year, — "That a public ferry be and the same is hereby established at the warehouse landing of Owen G. Cates and Robert Walker, fronting their lot, No. 3, in the town of Columbus, across the Mississippi river to the opposite shore, and that said ferry be in the name, and for the benefit, of said Cates and Walker, their heirs and assigns, forever: provided, however, that said Cates and Walker enter into bond, in the County Court of Hickman, in the penalty of $1,000, conditioned for the faithful performance of the duties required of other ferry keepers by law in this commonwealth."

At the session of 1830 (acts of 1830, chap. 533, page 148), an act was passed restoring the ferry privileges to the town of Columbus. The first section was as follows: —

"That so much of 'An act to establish a warehouse at the mouth of Jonathan's creek, in Calloway county, and for other purposes,' as establishes a public ferry at the warehouse landing of Owen G. Cates and Robert Walker, fronting their lot, No. 3, in the town of Columbus, across the Mississippi river to the opposite shore, in the name of the said Cates and Walker, their heirs and assigns, forever, be and the same is hereby repealed; it being satisfactorily proved that lot No. 3, in the town of Columbus, does not bind on the Mississippi river; that the margin of said river, opposite the town of Columbus, in laying off the same, was reserved as a public landing, and belongs to the trustees thereof, for the use of the inhabitants; that, under the laws of this State, the trustees of Columbus were vested with ferry privileges from the said public ground, on the margin of the river, across the Mississippi river, for the use of the inhabitants; that said Cates was the lessee of a ferry from the trustees of Columbus, and the said Walker his surety, at the time of granting the ferry hereby repealed; and that no notice of the application to the legislature was given to the said trustees, nor a representation, that a ferry was already established there, made in their petition to the legislature."

The second section repealed the grant to Cates and Walker, and the third section regranted and confirmed to the trustees, and their successors, all the ferry rights and privileges from the public ground, and vested them with power to lease one or more ferries from said public ground, from time to time, not exceeding five years at any one time.

Cates and Walker had complied with the requisitions of the act of 1829, and put their ferry into operation. Cates sold his interest to Walker, and he, dying, devised it to his wife, who continued in the exercise of it until interrupted by the trustees, who claimed the exclusive privilege of ferriage.

In September, 1842, Elizabeth Walker, the plaintiff in error, brought an action of trespass on the case against the trustees, in the

Hickman Circuit Court. The defendants filed five pleas, but it is only necessary to notice the first. That plea set forth all the aforesaid acts of assembly prior to the act of 1829; averred that the legal title to the land on which the town was situated had been vested for that purpose in trustees, as is above stated; that, upon the sale of the lots, there was a reservation made of all ferry rights to the trustees of the town, for its use; that they had been constantly in the exercise of those rights; that between lot No. 3 and the river there intervened a street, ten poles in width, and between that and the river a "common." From these facts, it deduced and alleged the exclusive ferry right of the defendants, coextensive with the limits of the town on the river, as incident to their alleged legal title to the common, as secured to them by said reservation on the sale of lots, and as granted to them by said prior acts of assembly.

And it therefore further alleged, that the act of 1829, granting a ferry to Cates and Walker, "was unconstitutional and void, being an attempt to impair and divest prior vested rights," &c.; and so justified the defendants for the disturbance and trespass complained of.

To this plea the plaintiff demurred; and, upon argument, the demurrer was overruled. The plaintiff, not filing any replication to this plea, judgment was entered for the defendants, for the want of a replication.

Mrs. Walker appealed to the Court of Appeals, where the judgment of the court below was affirmed, and a writ of error brought the case up to this court.

The cause was argued at the present term by *Mr. Crittenden*, for the plaintiff in error, and *Mr. Cates*, for the defendants.

Mr. Justice GRIER delivered the opinion of the court.

This case comes before us by a writ of error to the Court of Appeals of the State of Kentucky.

It has been argued by counsel, on the merits, without noticing the important preliminary question of jurisdiction.

The power intrusted to this court, of reviewing the decisions of State tribunals, is within narrow and well defined limits, and has been, in some instances, looked upon with jealousy. Our decisions may fail to command respect, unless we carefully confine ourselves within the bounds prescribed for us by the constitution and laws. If they have not conferred jurisdiction, the consent of parties will not justify its assumption. The record in this case shows, that the plaintiff declared, in an action on the case, for a disturbance of her right of ferry; asserting an exclusive right, in herself, by virtue of an act of the legislature of Kentucky, of the 31st of December, 1829. The defendants' first plea (the only one sustained by the

court), after averring a previous grant to themselves, by an act of the 27th of December, 1820, and other facts, unnecessary to notice, concludes as follows : — " And so the defendants say that the said act, dated the 31st of December, 1829, purporting to establish a public ferry at the warehouse landing of Owen G. Cates and Robert Walker, fronting their lot No. 3, in the town of Columbus, over the Mississippi river to the opposite shore, is unconstitutional and void, being an attempt to impair prior vested rights, without compensation therefor; all of which defendants are ready to verify," &c.

To this plea the plaintiff demurred ; the defendants joined in demurrer, and the Circuit Court of Kentucky gave judgment for defendants. The plaintiff then appealed to the Court of Appeals of that State, who affirmed the judgment of the Circuit Court.

The record, therefore, presented this single issue, — " Whether the act of the legislature of Kentucky, of the 21st of December, 1829, under which the plaintiff claimed title, was unconstitutional and void," as being repugnant to the constitution of the United States, and the decision of the Court of Appeals, is against its validity.

The twenty-fifth section of the act of the 24th of September, 1789, which confers on this court the power of supervision over the State tribunals, so far as at present applicable, confines it to cases "where is drawn in question the validity of a statute of, or an authority exercised under, any State on the ground of their being repugnant to the constitution or laws of the United States, and the decision is in favor of such their validity." That this case does not come within the category, is too plain to admit of argument or require authority. The reason and policy of granting to this court the power to revise the decisions of the State courts when in favor of the validity of their own statutes, and refusing it to us when the judgment is against their validity, are obvious, and are fully stated by the court in the case of The Commonwealth Bank of Kentucky *v.* Thomas Griffith et al., 14 Peters, 56. That case is precisely in point with the present, and decides that, — " Under this clause of the act of Congress, three things must concur to give this court jurisdiction. 1st. The validity of a statute of a State must be drawn in question. 2d. It must be drawn in question upon the ground that it is repugnant to the constitution, treaties, or laws of the United States. 3d. The decision of the State court must be in favor of their validity."

As the judgment of the Court of Appeals of Kentucky was rendered against the validity of the statute in this case, it must be dismissed for want of jurisdiction.

Order.

This cause came on to be heard on the transcript of the record from the Court of Appeals for the State of Kentucky, and was

argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that this writ of error be and the same is hereby dismissed for the want of jurisdiction.

SAMUEL HILDEBURN, PLAINTIFF, *v.* HENRY TURNER, DEFENDANT.

When a bill of exchange is made payable at a bank, and the bank itself is the holder of the bill, it is a sufficient demand if the notary presents it at the bank and demands payment.

If, therefore, the protest states this and also that the notary was answered that it could not be paid, it is sufficient. It is not necessary for him to give the name of the person or officer of the bank to whom it was presented, and by whom he was answered.

THIS case came up on a certificate of division in opinion from the Circuit Court of the United States for the Southern District of Mississippi.

The point of difference is fully set forth in the opinion of the court.

It was argued by *Mr. Brent*, for the plaintiff, and *Mr. Bibb*, for the defendant.

Mr. Brent, for plaintiff.

The single question is on the admissibility of the notarial protest; and, if admissible for any purpose, it is competent evidence. The bill of exchange is drawn in Mississippi, payable in Louisiana; and, in such case, the protest is evidence by the law merchant. 2 Peters, 593; 2 Peters, 691; Waldron *v.* Turpin, 15 Louisiana Rep. 555; 5 Martin's (N. S.) Rep. 513. On this head, I also refer to the statute of Louisiana, 1827 (Bullard and Cuny's Digest, 13, 43), and to 14 Louisiana Rep. 394; Franklin *v.* Verbois, 6 Louisiana Rep. 730. The demand is presumed to be made in business hours. Fleming *v.* Fulton, 6 Howard's Miss. Rep. 484. I also refer to the decision of this court in Musson *v.* Lake, 4 How. S. C. R. 262, and to Brandon & Lofftus *v.* Whitehead, 4 How. S. C. R. 127; also to Bank of the United States *v.* Carneal, 2 Peters, 549.

Mr. Bibb, for defendant.

The objection taken to the reading of the protest offered in evidence was, that the protest did not contain a sufficient statement of the presentment of the bill for payment.

The bill was drawn by A. G. Bennett, at Canton, Mississippi, on H. F. Bennett, at same place, in favor of Henry Turner, in New Orleans, for $995.04, payable at the Merchants' Bank of New